

**STATE WATER CONTROL BOARD ENFORCEMENT ACTION  
A SPECIAL ORDER BY CONSENT  
ISSUED TO:**

**C. L. Custer, Inc.**

AST Facility at 2010 W. Market Street, Harrisonburg, VA  
Facility Identification No. 6-030790

**SECTION A: Purpose**

This is a Special Order by consent issued under the authority of Va. Code §§ 62.1-44.15 (8a) and 8(d) between the State Water Control Board and C. L. Custer, Inc. to resolve certain violations of the State Water Control Law and regulations at C. L. Custer, Inc. Aboveground Storage Tank Facility located at 2010 W. Market Street in Harrisonburg and Rockingham County, Virginia.

**SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. “Board” means the State Water Control Board, a permanent citizen’s board of the Commonwealth of Virginia as described in Code §§ 10.1-1184 and 62.1-44.7.
2. “Code” means the Code of Virginia (1950), as amended.
3. “AST” means aboveground storage tank, as further defined in 9 VAC 25-91-10.
4. “Custer” means C. L. Custer, Inc., a Virginia corporation and the AST owner and operator within the meaning of Virginia Code § 62.1-44.34:14.

5. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code § 10.1-1183.
6. “Director” means the Director of the Department of Environmental Quality.
7. “Facility” means the retail bulk fuel storage station and ASTs owned and operated by Custer located at 2010 W. Market Street in Harrisonburg & Rockingham County, Virginia. The Facility’s ASTs are further identified by AST numbers 1 through 10.
8. “Order” means this document, also known as a Consent Special Order.
9. “Regional Office” means the Valley Regional Office of the Department.
10. “Regulation” means 9 VAC 25-91-10 *et seq.* (Facility and Aboveground Storage Tanks Regulation.) relating to registration and closure of ASTs, Oil Discharge Contingency Plans and Pollution Prevention requirements for AST facilities.
11. “ODCP” means Oil Discharge Contingency Plan as detailed in 9 VAC 25-91-170.
12. “Form 7540” means the AST notification form used by the DEQ to register and track ASTs for proper operation, closure and ownership purposes. See 9 VAC 25-91-100.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. Custer is the owner and operator of the ASTs at this Facility within the meaning of Virginia Code § 62.1-44.34:14.
2. On November 5, 2002, an employee of Custer overfilled the 17,000-gallon horizontal diesel AST during a rain event at night and failed to observe the discharge or report it. The discharge, which was approximated at 550 gallons, flowed out the dike through the open dike valve, across the facility parking lot and into a storm drainage ditch. Custer asserts that discharge was not intentional. The diesel flowed through the storm drainage ditch under US Route 33 to the south side of the highway and into a stream traveling through a Harrisonburg golf course. A golf course employee noticed the presence of diesel in the stream and reported it to Harrisonburg Fire Department on November 6, 2002. This discharge occurred in an apparent violation of State Water Control Law Section 62.1-44.34:18.
3. On November 6, 2002, DEQ staff responded to the spill and Simon & Associates was

hired by Custer to contain and remove any residual product and contaminated soil resulting from the discharge.

4. On November 20, 2002, DEQ staff conducted a formal inspection of the Facility. The following deficiencies were noted:
  - a. Inventory Control – The facility appears to be performing a form of inventory control based on each different product sold, not on each individual tank as is required by 9 VAC 25-91-130.B.1.
  - b. Piping – Piping has not been pressure tested as required by 9 VAC 25-91-130 B.4.
  - c. Leak Detection – The two most recent months of Statistical Inventory Reconciliation (SIR), the leak detection method used on the vertical ASTs, were not available for review as required by 9 VAC 25-91-130 B.4.
  - d. Secondary Containment – The secondary containment area had not been evaluated by a professional engineer to be in compliance with 40 CFR 112, NFPA 30, and 29 CFR 1910.106 as required by 9 VAC 25-91-130 B.2.
  - e. Daily & Weekly Inspections – The permittee represented to DEQ that daily inspections were being conducted, however not all regulatory items were being inspected and nor were the inspections being recorded. In addition, weekly inspections were being performed and recorded, but not all regulatory items were being inspected as required by 9 VAC 25-91-130 B.5.
  - f. Training Program - A written training program covering performance of daily/weekly facility inspections and safe fill/transfer/shutdown procedures for existing and new personnel did not exist as required by 9 VAC 25-91-130 B.6.a.
    1. Personnel Training - Once a written training program is established, facility personnel will need to be trained regarding all items listed in 9 VAC 25-91-130 B.6.c. This training will need to be documented in accordance with 9 VAC 25-91-130 B.6.b.
  - g. Safe fill/transfer/shutdown Procedures – The facility did not have a written safe fill/transfer/shutdown procedure as required by 9 VAC 25-91-130 B.3.a.
    1. Vehicle Spill Containment – The facility was not equipped with a vehicle spill containment system. A spill containment system capable of collecting and containing any spills resulting from transfer operations where product transfer connections are made with vehicles will need to be installed. 9 VAC 25-91-130 B.3.b.
    2. Tank Gauges – A tank gauge was not installed on one vertical AST and only two of the facility tank gauges had been calibrated in the past year as required by 9 VAC 25-91-130 B.3.d.
    3. Tank Identification – ASTs were not labeled with their corresponding identification numbers as required by 9 VAC 25-91-130 B.3.d.
    4. Valve Security – Fill and dike valves were not secured consistently as required by VAC 25-91-130 B.3.
  - h. Registration – One vertical 20,000 gallon AST had not been registered with the DEQ and two vertical 20K ASTs had experienced a “change in service” without properly notifying the DEQ as required by 9 VAC 25-91-100 & -110.

- i. ODCP – The facility’s ODCP expired on May 20, 2002, and the DEQ had no record of receiving an ODCP update or renewal certification form as required by 9 VAC 25-91-170.
5. In response to the discharge and the apparent violations of the Regulation noted during the inspection, DEQ staff issued a Notice of Violation (No. 02-12-VRO-1) to Custer on December 3, 2002. The NOV was specifically issued for failure to comply with State Water Control Law Article 11, Section 62.1-44.34:18; Section 62.1-44.34:15.1; 9 VAC 25-91-130 & 9 VAC 25-91-170. The NOV requested that Custer respond by December 13, 2002, and included a copy of the formal inspection results, detailing the apparent violations noted above.
6. DEQ staff received a telephone call from Custer and its consultant on December 10, 2002, informing DEQ of its intentions to remodel the facility in order to comply with the Regulations. Custer requested a desired timeframe for completion of this project from DEQ staff. DEQ staff recommended that a detailed plan be prepared and submitted for review. The proposed plan will include the removal of certain ASTs, the installation of a new dike area, and other upgrades to meet current regulatory requirements.
7. On December 12, 2002, DEQ staff received a response to the NOV issued to Custer on December 3, 2002 and on the ODCP renewal certification. However, an updated ODCP was not submitted.
8. On January 15, 2002, Custer’s consultant met with DEQ staff to discuss certain requirements of the regulations and to convey continuing developments of the Facility remodeling project. Detailed information regarding the requirements of the Regulation was provided to the contractor. A formal plan has not yet been submitted.

#### **SECTION D: Agreement and Order**

Accordingly, the Board, by virtue of the authority granted it in Va. Code §§ 62.1-44.15 (8a) and (8d), orders Custer and Custer agrees that:

1. To remedy the alleged violations described above and bring the Facility into compliance with the Regulation, Custer shall perform the actions described in Appendix A to the Order.
2. Custer shall pay a civil charge of \$10,607.00, within 30 days of the effective date of the Order. Payment shall be by check, certified check, money order, or cashier’s check payable to “Treasurer of the Commonwealth of Virginia” and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, Virginia 23240

3. Custer shall also include its Federal Identification Number with the civil charge payment and shall note on the payment that it is being made pursuant to this Order.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of Custer, for good cause shown by Custer, or on its own motion after notice and opportunity to be heard.
2. This Order addresses only those violations specifically identified herein. This Order shall not preclude the Board or Director from taking any action authorized by law, including, but not limited to: (1) taking any action regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts.
3. This Order is made by agreement and with the consent of the parties and does not constitute a finding, adjudication or admission of violation of any federal, state, or local law, rule, or regulation or any allegations contained herein. For the purpose of this Order only, Custer admits the jurisdictional allegations in the Order.
4. Custer consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Custer declares it has received fair and due process under the Virginia Administrative Process Act, Code §§ 2.2-4000 *et seq.*, and the State Water Control Law, and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Custer to comply with any of the terms of this Order shall constitute a violation

of an order of the Board. Nothing herein shall act to waive or bar the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Custer shall be responsible for failing to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. Custer must show that such circumstances resulting in noncompliance were beyond its control and not due to a lack of good faith or diligence on its part. Custer shall notify the Director of the Regional Office in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:
  - a. The reasons for the delay or noncompliance;
  - b. The projected duration of such delay or noncompliance;
  - c. The measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. The timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Director of the Regional Office in writing within 10 days of learning of any condition listed above, which Custer intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Custer. Notwithstanding the foregoing, Custer agrees to be bound by any compliance date, which precedes the effective date of this Order.
11. This Order shall continue in effect until:

- a. Custer petitions the Regional Director to terminate the Order after it has completed all requirements of the Order. The Director's determination that Custer has satisfied all the requirements of the Order is a Acase decision within the meaning of the Virginia Administrative Process Act; or
- b. The Director or the Board may terminate this Order in his or its whole discretion upon 30 days written notice to Custer.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Custer from his obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By its signature below, Custer voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
Robert G. Burnley, Director  
Department of Environmental Quality

The terms and conditions of the Order are voluntarily accepted by Custer:

Date: \_\_\_\_\_ By: \_\_\_\_\_

Title: \_\_\_\_\_

Commonwealth of Virginia, City/County of \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2003, by  
\_\_\_\_\_, who is \_\_\_\_\_ of Custer, on behalf of the Corporation.

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Date my commission  
expires

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Notary Public



**Appendix A**  
**C.L. Custer, Inc.**

**AST Facility at 2010 W. Market Street, Harrisonburg, VA**

- A. **Corrective Action, general terms.** In addition to payment of a civil charge, Custer shall address the following deficiencies in order to return to full compliance; all deficiencies shall be addressed no later than 45 days after of the effective date of this Order:
1. **Inventory Control** – Custer shall take readings on each tank gauge each day or normal operation, allocate the oil proportionately to each tank and reconcile these readings on a monthly, per tank basis. In addition, Custer shall use an infrared thermometer to allow for more accurate temperature correction on daily readings.
  2. **Piping** – Custer shall pressure test piping; such testing may be done during upgrade of the facility if Custer elects to upgrade.
  3. **Leak Detection** – Custer shall submit the two most recent months' SIR reports, if it has not already done so.
  4. **Secondary Containment** – Custer shall submit a plan for upgrading the secondary containment system if the facility remains in service. Plans shall be submitted to DEQ for review if the facility is upgraded.
  5. **Daily & Weekly Inspections** – Custer shall implement daily inspections. The inspections shall be documented in writing once each week and on the inventory form each day. Custer shall submit one-month records of both daily and weekly inspections to DEQ for review.
  6. **Training Program** - Custer shall develop and implement a written training program.
  7. **Personnel Training** - Any employee involved in either inventory control, inspection, or fuel transfer shall be trained in their area of responsibility. A log indicating the instructor's name, the date of training, the agenda reviewed, and the personnel trained shall be signed and placed with the ODCP records.
  8. **Safe fill/transfer/shutdown Procedures** – Custer shall keep on file a written safe fill/transfer/shutdown procedure.
  9. **Vehicle Spill Containment** – Custer shall install and maintain a proper spill containment system capable of collecting and containing spills resulting from transfer operations.
  10. **Tank Gauges** – Custer shall install any required tank gauge and calibrate all tank gauges at least annually.
  11. **Tank Identification** – Custer shall properly label all tanks.

**12. Valve Security** – All fill valves not in use and dike valves shall be secured at all times, except for the removal of rainwater.

**13. Registration** – Registration forms shall be submitted, if this matter has not yet been addressed.

**14. ODCP** – Custer shall submit an ODCP renewal form, if this matter has not yet been addressed.

**15. Summary Report** – Custer shall submit to DEQ a summary report referencing actions taken by Custer on the above-enumerated deficiencies.

**B. Corrective Action, Facility Upgrade** . In addition to payment of a civil charge and adherence to the corrective actions enumerated above, Custer shall also:

1. Provide a design plan, written summary, and schedule of improvements for planned facility upgrades to DEQ within 45 days of the execution of this Order; and
2. Complete all planned facility upgrades prior to September 30, 2003.